

Decision _____

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

Order Instituting Rulemaking to
Consider Whether Text Messaging
Services are Subject to Public Purpose
Program Surcharges.

R.17-06-023

**DECISION GRANTING INTERVENOR COMPENSATION TO THE
GREENLINING INSTITUTE FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 19-01-029**

Intervenor: The Greenlining Institute	For contribution to Decision D.19-01-029
Claimed: \$32,507.50	Awarded: \$32,507.50
Assigned Commissioner: Martha Guzman Aceves	Assigned ALJ: Regina DeAngelis and Zita Kline

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	The Commission determined that it would not assess Public Purpose Program surcharges and user fees on text messaging services revenue.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812¹:

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	09/13/2017	Verified
2. Other specified date for NOI:	N/A	
3. Date NOI filed:	09/01/2017	Verified
4. Was the NOI timely filed?		Yes
Showing of eligible customer status (§ 1802(b) or eligible local government entity status (§§ 1802(d), 1802.4)):		
5. Based on ALJ ruling issued in proceeding number:	R.10-02-005	Verified
6. Date of ALJ ruling:	March 29, 2010	Verified
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer status or eligible government entity status?		Yes
Showing of “significant financial hardship” (§1802(h) or §1803.1(b)):		
9. Based on ALJ ruling issued in proceeding number:		R.17-06-023
10. Date of ALJ ruling:		ALJ Ruling on September 26, 2017 & supplemental filing by Greenlining on October 25, 2017
11. Based on another CPUC determination (specify):	See Comment 1.	Verified

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

12. Has the Intervenor demonstrated significant financial hardship?	Yes
Timely request for compensation (§ 1804(c)):	
13. Identify Final Decision:	D.19-01-029 Verified
14. Date of issuance of Final Order or Decision:	2/9/2019 Verified
15. File date of compensation request:	4/09/2019 Verified
16. Was the request for compensation timely?	Yes

C. Additional Comments on Part I:

#	Intervenor's Comment(s)	CPUC Discussion
1	<p>Greenlining provided the following explanation in its request for a finding of significant financial hardship in its September 1, 2017, Notice of Intent to File Intervenor Compensation:</p> <ol style="list-style-type: none"> 1. Greenlining is an organization authorized in its Articles of Incorporation to represent the interests of both residential and small telecommunication customers, with particular focus on low-income and of-color communities and customers. A copy of Greenlining's Articles of Incorporation was previously filed with the Commission in R.10-02-005 (as an attachment to our NOI, filed March 5, 2010). As such, Greenlining is a Category 3 customer as defined in D.98-04-059. 2. As a Category 3 customer, Greenlining must satisfy the "comparison test" by demonstrating that the economic interest of its members and constituencies in the instant proceeding is small relative to the cost of effective 	<p>#1 – Greenlining meets requirements for significant financial hardship based on ALJ Ruling dated September 26, 2017 and Greenlining's filing dated October 25, 2017.</p>

	<p>participation in the proceeding. Greenlining submits that it satisfies this test.</p> <p>3. In this proceeding, customers will benefit from Greenlining's advocacy for increased clarity regarding how much, and on what basis, customers pay surcharges for public purpose programs. Customers who lack the technical and procedural experience to effectively participate at the CPUC are unlikely to do so for their own individual interests, as the cost to do so would be significantly higher than the dollars they would save. These are customers who may otherwise go unrepresented but for Greenlining's participation.</p> <p>4. It may be difficult to quantify exactly what financial benefits consumers might receive from the Commission's determination of this matter. However, as a result of Greenlining's advocacy in this proceeding, consumers will benefit from increased clarity about the funding sources and methods for PPP surcharges, and may further benefit from PPP funding being drawn equitably from a number of different services. It is safe to assume that the "savings" experienced by customers as a result of this proceeding will greatly exceed Greenlining's claim.</p> <p>5. Because the cost of participation exceeds the</p>	
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	<p>financial benefit to be reaped by individual customers, Greenlining satisfies the “comparison test” as described above. In satisfying this test, Greenlining submits that it has successfully demonstrated significant financial hardship as appropriate for a Category 3 customer.</p> <p>On September 26, 2017, the ALJ ruled that Greenlining had made a provisional showing of significant financial hardship, subject to providing additional information and documents (ALJ Ruling, September 26, 2017). Greenlining provided that information on October 25, 2017, and is awaiting a final ruling.</p> <p>The most recent ruling addressing Greenlining’s showing of significant financial hardship was issued on January 31, 2019, in D.19-01-042.</p>	
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PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (*see* § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059):

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>1. Substantial Contribution Standard:</p> <p>The Commission has long held that contribution to an ALJ’s Proposed Decision is evidence of a substantial contribution, even if the Commission does not adopt the PD’s recommendations.</p> <p>Examples of prior proceedings where the Commission has determined that a party’s</p>		Verified.

contribution to a proposed decision that was not eventually adopted was still sufficient to support an award of compensation include D.11-05-044, where the Commission awarded TURN substantially all of its requested compensation in a proceeding where it adopted an Alternate PD, which did not adopt TURN's recommendations, over a PD which would have done so. In awarding compensation, the Commission specifically noted that "TURN's participation ensured a thorough analysis on [the relevant issues], and their position was reflected in the PD, though not in the alternate PD, which was the final decision that was adopted. D.11-05-044 at p. 4.

The Commission reached a similar outcome in D.13-09-041, awarding compensation to TURN based on its contributions to a proposed decision, even though it approved an alternate proposed decision which did not adopt TURN's positions. See also D.06-09-008 at p. 10 (agreeing that TURN made a substantial contribution to a proceeding "because the decision addressed issues raised by TURN and an Alternate Decision relied on several of TURN's proposals").

While Greenlining's contributions are set out in greater detail in Section II.A, the relevant Proposed Decision, Decision Determining Text Messaging Services Revenue should be Subject to Public Purpose Program Surcharges and User

Fees (Filed Nov. 9, 2018) (hereafter, “November PD”), was eventually withdrawn based on action taken by the FCC after the Commission issued the Proposed Decision.

Greenlining submits that the work performed by the consumers in this proceeding, which was first initiated in response to a carrier petition proceeding, was appropriate and that the arguments put forward by Greenlining and the consumers contributed substantially to the Commission’s consideration of the important policy issues raised in this proceeding. Greenlining further submits that the eventual rejection of the consumers’ position was based not on a rejection of our contributions but on changed circumstances based on FCC action.

Greenlining’s request for compensation relies on its participation in the proceeding seeking a determination that surcharges and user fees should be applied to text messaging, a result that is not adopted in the final decision. Yet, prior to the adoption of D.19-01-029, the Commission issued a proposed decision that would have taken a position strongly in keeping with the position advocated by Greenlining in conjunction with the other Joint Consumers.

As illustrated in greater detail below, because the PD substantially reflects the input of Greenlining and the other consumers, the Commission should find a substantial

<p>contribution warranting an award of intervenor compensation for the work Greenlining incurred for its participation in the proceeding.</p>		
<p>2. Scope of Proceeding</p> <p>Greenlining opposed CTIA's Petition asking the Commission to adopt a regulation that text messaging services are not subject to Public Purpose Program surcharges. Response of Joint Consumers to Petition of CTIA to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code §1708.5, P.17-02-006 (Mar. 29, 2017).</p> <p>Greenlining opposed Cox's request to expand the scope of the proceeding to include a review of directory listing services. Reply Comments of Joint Consumers on Proposed Decision in P.17-02-006 at pp. 1-3 (June 6, 2017); Joint Consumers' Reply Comments at pp. 11-12 (August 28, 2017).</p> <p>Greenlining opposed CCTA's</p>	<p>The Commission determined that the Petition "should be granted to the extent it asks the Commission to open a rulemaking proceeding to consider" the proper classification of text messaging services. The Commission denied the petition "in all other respects." Order Regarding Petition 17-02-006 and Order Instituting Rulemaking to Consider Whether Text Messaging Services are Subject to Public Purpose Program Surcharges, issued jointly in P.17-02-006 and R.17-06-023, Conclusions of Law 1-2.</p> <p>"In its comments Cox urged the Commission to expand the scope of the proceeding to include directory service charges as well as text messages. In their reply, Joint Consumers asked the Commission to reject Cox's comments as non-responsive because they do not comply with Commission Rule 14.3(c) which requires that comments "shall focus on factual, legal or technical errors" in the proposed decision. We concur with Joint Consumers and accordingly we reject Cox's comments." Order Regarding Petition 17-02-006 and Order Instituting Rulemaking to Consider Whether Text Messaging Services are Subject to Public Purpose Program Surcharges, issued jointly in P.17-02-006 and R.17-06-023 at p. 12 (July 7, 2017).</p> <p>"[T]he portions of CCTA's opening</p>	<p>Verified.</p>

request to expand the scope of the proceeding to include both directory listing services and voicemail. Joint Consumers' Reply Comments in Response to Joint Ruling of Assigned Commissioner and Administrative Law Judge at p. 5 (April 6, 2018); Joint Consumers' Motion to Strike at pp. 4-6 (May 17, 2018).	brief which request the California Public Utilities Commission (Commission) determine whether voicemail and directory listing services are subject to Public Purpose Program surcharges and user fees are out of scope for the proceeding at this time. Portions of CCTA's opening brief are stricken from the record, as shown in the redlined version of CCTA's opening brief attached." Administrative Law Judge's Ruling Granting Motion to Strike at pp. 1-2 (May 25, 2018).	
<p>3. Federal classification of text messages</p> <p>Greenlining argued that federal law does not prohibit the imposition of surcharges on text messaging services. (Joint Consumers' Opening Comments at pp. 7-9 (August 18, 2017); Joint Consumers' Opening Brief at pp. 2-6 (May 11, 2018); Joint Consumers' Reply Brief at pp. 2-5 (June 5, 2018); Joint Consumers Reply Comments on November 9, 2018 Proposed Decision (December 4, 2018).</p> <p>Greenlining argued that the Commission has authority to assess surcharges on text messaging regardless of the classification of text messaging as either a telecommunications service or an information service. (Joint Consumers' Opening Comments at pp 7-9 (August 18, 2017), Joint Consumers' Reply Comments at pp. 6-7 (August 28, 2017).</p>	<p>The November Proposed Decision held that surcharging text revenue is not inconsistent with federal requirements. (November PD at pp. 15-21).</p> <p>The November Proposed Decision determined that that the Commission did not need to address classification of text messaging services prior to determining whether the Commission should assess surcharges on those services. (November PD at pp. 21-25).</p>	Verified.
4. Commission authority to impose PPP surcharges on text messaging.		Verified.

<p>Consumers argued that the Commission has statutory authority to collect surcharges on intrastate texting revenue. Joint Consumers' Opening Comments at pp 9-11 (August 18, 2017), Joint Consumers' Reply Comments at pp. 7-10 (August 28, 2017; Joint Consumers' Opening Brief at pp. 14-22 (May 11, 2018); Joint Consumers' Reply Brief at pp. 9-14 (June 5, 2018).</p> <p>Consumers argued that collection of surcharges on text messaging services is consistent with state policy to pursue broad support for public purpose programs. Joint Consumers' Opening Brief at pp. 6-10 (May 11, 2018); Joint Consumers' Reply Brief at pp. 5-9).</p>	<p>The November Proposed Decision affirmed the Commission's statutory authority to collect surcharges on intrastate texting revenue. (November PD at pp. 25-32).</p> <p>While CCTA requested that the Commission remove language in the final Decision that discussed the Commission's statutory authority to impose surcharges on non-telecommunications services, the Decision expressly declined to do so. Additionally, the Commission did not adopt CCTA/CTIA's argument that the Commission cannot impose surcharges on text messaging; rather, it declined to include text messaging, but it no way stated that the Commission was prohibited from doing so. (D.19-01-029 at pp. 18-19).</p> <p>The November Proposed Decision noted that the Commission's collecting surcharges on intrastate texting revenue preserves and advances universal service and is equitable. (November PD at pp. 9-15).</p>	
<p>5. Impact of a change on Commission policy on surcharge levels and public purpose funding</p> <p>Greenlining argued that assessing Public Purpose Program surcharges on text messaging would help the Commission preserve and advance Universal Service. Joint Consumers' Opening Brief at p. 11 (May 11, 2018).</p> <p>Greenlining argued that it was inequitable that "wireline and</p>	<p>The November PD found that assessing Public Purpose Program surcharges on text messaging would preserve and advance universal service. November PD at pp. 9-12.</p> <p>The November PD found that assessing Public Purpose Programs</p>	<p>Verified.</p>

wireless voice customers and customers of carriers who currently assess surcharges on text messaging are currently paying a disproportionate share of PPP obligations.” Joint Consumers’ Reply Comments on Joint Ruling at p. 10 (April 6, 2018); see also Joint Consumers’ Reply Brief at p. 6 (June 5, 2018).	<p>surcharges on text messaging would be equitable. November PD at pp. 12-15.</p> <p>The final Decision found that the Commission has an obligation to encourage the equitable provision of services. D.19-01-029 at p. 16.</p>	
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B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor’s Assertion	CPUC Discussion
a. Was the Public Advocate’s Office of the Public Utilities Commission (Cal Advocates) a party to the proceeding? ²	No	Verified
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified
c. If so, provide name of other parties: Center for Accessible Technology, The Utility Reform Network		Verified
d. Intervenor’s claim of non-duplication: Throughout this proceeding, Greenlining coordinated closely with other intervenors to avoid or minimize duplication of its work. Greenlining remained in regular contact with advocates from CforAT and TURN to ensure that Greenlining’s work was not duplicative. Where parties agreed, they coordinated rather than merely echoing each other. This allowed Greenlining, CforAT and TURN to avoid the need to individually research issues. Additionally, as reflected in Greenlining’s recorded hours, the coordination with other intervenors allowed Greenlining to focus on specific areas of expertise, including how federal rules affect state universal service programs and how the courts and the Federal Communications Commission have distinguished between telecommunications services and information services. Greenlining urges the Commission to find that any duplication of effort was minimal and was necessary to ensure effective and efficient representation of a wide variety of consumer interests.		Agreed. Greenlining did not engage in excessive duplication.

² The Office of Ratepayer Advocates was renamed the Public Advocate’s Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§ 1801 and § 1806):**

	CPUC Discussion
<p>a. Intervenor’s claim of cost reasonableness:</p> <p>As a result of Greenlining’s advocacy in this proceeding, consumers will benefit from increased clarity about the funding sources and methods for PPP surcharges. It may be difficult to quantify exactly what financial benefits consumers might receive from the Commission’s determination of this matter. However, it is safe to assume that the “savings” experienced by customers as a result of this proceeding will greatly exceed Greenlining’s claim.</p> <p>Additionally, as discussed above, prior to the adoption of D.19-01-029, the Commission issued a proposed decision that would have taken a position strongly in keeping with the position advocated by Greenlining in conjunction with the other Joint Consumers. The eventual rejection of the consumers’ position was based not on a rejection of Greenlining’s contributions but on changed circumstances based on FCC action.</p> <p>As such, Greenlining submits that its overall costs are reasonable.</p>	Verified.
<p>b. Reasonableness of hours claimed:</p> <p>Greenlining’s hours were reasonable given the highly technical or legally complex issues being considered in this proceeding, including the technology underlying text messaging and the interplay between federal and California universal service mechanisms. Additionally, Greenlining coordinated with CforAT and TURN throughout this proceeding. Each organization came into the proceeding possessing different, complementary areas of expertise, and each stuck to these areas throughout the proceeding, which eliminated overlapping efforts and ensured that each person was efficient, by working on the areas of his or her expertise.</p> <p>Additionally, Greenlining has recorded a number of hours in the “coordination” category. Greenlining spent substantial time coordinating with CforAT and TURN. This time helped avoid duplicative work and improved efficiency among the parties.</p> <p>Greenlining staff recorded an unusual amount of time in the General Category because the Administrative Law Judge’s September 26, 2017 Ruling on The Greenlining Institute’s Showing of Significant Financial</p>	Verified.

Hardship requested a number of documents from Greenlining, including two years' worth of information about grants, received contributions, and income and expenses. To preserve Greenlining's ability to advocate on behalf of the communities that Greenlining represents, Greenlining filed some of its response under seal. This added a certain amount of time that would not ordinarily be present a proceeding. Additionally, this proceeding involved a large number of procedural motions that required analysis and responses.	
c. Allocation of hours by issue: A. Scope of Proceeding—6.0% B. Commission authority to impose PPP surcharges on text messaging—21.8% C. Federal classification of text messages—47.1% D. Impact of a change in Commission policy on surcharge levels and public purpose funding—9.7% E. General—9.2% F. Coordination among parties—6.2%	Verified.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Paul Goodman	2017	45.5	\$370	D.19-02-021	\$16,835.00	45.5	\$370	\$16,835.00
Paul Goodman	2018	23.0	\$380	D.19-02-021	\$8,740.00	23.0	\$380	\$8,740.00
Paul Goodman	2019	1.9	\$390	Comment 1	\$741.00	1.9	\$390	\$741.00
Vinhcent Le	2018	21.5	\$200	D.19-02-021	\$4,300.00	21.5	\$200	\$4,300.00
Subtotal: \$30,616.00						Subtotal: \$30,616.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Paul Goodman	2019	9.7	\$195	Comment 1	\$1,891.50	9.7	\$195	\$1,891.50
Subtotal: \$1,891.50						Subtotal: \$1,891.50		
TOTAL REQUEST: \$32,507.50						TOTAL AWARD: \$32,507.50		

*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

**Travel and Reasonable Claim preparation time are typically compensated at ½ of preparer's normal hourly rate

ATTORNEY INFORMATION

Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Paul Goodman	04/24/2002	219086	No

C. Attachments Documenting Specific Claim and Comments on Part III: (attachments not attached to final Decision)

Attachment or Comment #	Description/Comment
Comment 1	Assuming a typical COLA of 3% for 2019, \$390 (\$195 for claim preparation) is an appropriate rate for Mr. Goodman's work in 2019.
Attachment A	Recorded Hours in R.17-06-023

D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
2019 rate Paul Goodman	Comment: Intervenors applied incorrect percentage increase for 2019 rate. The correct COLA is 2.35% per Resolution ALJ-357. The outcome is the same so no changes to rates are made.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (*see* § 1804(c))

A. Opposition: Did any party oppose the Claim?	No
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³ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes
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FINDINGS OF FACT

1. The Greenlining Institute has made a substantial contribution to D.19-01-029.
2. The requested hourly rates for The Greenlining Institute's representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$32,507.50.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. The Greenlining Institute shall be awarded \$32,507.50.
2. Within 30 days of the effective date of this decision, the California Public Utilities Commission Intervenor Compensation Fund shall pay The Greenlining Institute the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning June 23, 2019, the 75th day after the filing of The Greenlining Institute's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at Los Angeles, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision:	D1901029		
Proceeding:	R1706023		
Author:	ALJs Kline and DeAngelis		
Payer:	CPUC Intervenor Compensation Fund		

Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Greenlining Institute	4/9/19	\$32,507.50	\$32,507.50	N/A	N/A

Hourly Fee Information

First Name	Last Name	Attorney, Expert, or Advocate	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Paul	Goodman	Attorney	\$370	2017	\$370
Paul	Goodman	Attorney	\$380	2018	\$380
Paul	Goodman	Attorney	\$390	2019	\$390
Vinhcent	Le	Attorney	\$200	2018	\$200

(END OF APPENDIX)